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STATEMENT OF PATRICK V. MURPHY
DEPUTY ASSISTANT SECRETARY OF TRANSPORTATION
FOR POLICY AND INTERNATIONAL AFFAIRS
BEFORE THE
HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEE ON AVIATION
CONCERNING H.R. 5124, THE AIRFARE REFORM ACT OF 1992
SEPTEMBER 24, 1992

Mr. Chairman and Members of the Subcommittee, I am pleased to have this opportunity to appear before you to comment on H.R. 5124, the Airfare Advertising Reform Act of 1992, and the Department's efforts to ensure that airline advertising is not deceptive.

With me today is Samuel Podberesky, the Department's Assistant General Counsel for Aviation Enforcement and Proceedings, who is available to answer your questions concerning the Department's aviation economic enforcement activities, and Hoyte Decker, the Department's Assistant Director for Consumer Affairs, who can answer questions about the Department's efforts to resolve problems air travelers have with the airline industry.

We have reviewed H.R. 5124 and believe that it is based on two presumptions: that deceptive airline advertising is a rampant problem and that the federal government, through the Department of Transportation, is doing little to protect consumers from such practices. Both assumptions are wrong. Moreover, we believe the advertising requirements mandated by the legislation would disrupt the marketing activities of the airline industry with consumers being the ultimate victims of the higher airfares that would result from the lessening of price competition. We oppose the

legislation. We view it as an example of unneeded, disruptive and costly regulation which would do more harm than good.

Before describing our advertising enforcement and compliance programs and discussing the bill itself, I must point out that our goal in the area of airline advertising, as well as all other economic regulatory areas involving the airline industry, is to maximize benefits to aviation consumers. Deregulation of the airline industry 14 years ago unquestionably brought enormous benefits to the traveling public. Passengers enjoy a wider choice among airlines and more frequent service. Air travel has become accessible to millions of Americans who did not fly before deregulation. The number of Americans who travel on scheduled airlines in the United States has increased 65 percent and many more passengers are traveling in competitive markets. Finally -- and perhaps most important -- airline travel is much less expensive. Every major study of the airline industry shows that air fares continue to decline in real terms. In fact, for the 12 months ended June 1992, the average fare, adjusted for inflation, was 32 percent lower than in 1981.

The proposed legislation is presumably deemed necessary by its sponsors because of a concern that consumers have not always been able to obtain seats at advertised fares. But the traffic and revenue results show the American public enjoying the greatest fare bargains ever. During the recent summer fare war, traffic

grew by leaps and bounds. In August, more than 42 million passengers traveled -- the biggest month in the history of the airline industry. Just think, last month alone the equivalent of 1 out of 6 Americans flew on our airlines. Or put another way, the equivalent of the entire populations of California and New York were carried by our airlines at low fares. In fact, air fares in August were at the absolute lowest levels (i.e., not even factoring in inflation) since 1980.

Given the level of airline reservations activity that occurred during the fare wars, it should not be surprising that after the announcements of the low fares, the deepest discount seats on certain flights and on certain dates would be quickly sold out. But a huge number of passengers flew, many for the first time, as a result of the low fares. And we do not want to deprive these travelers of the benefits of price competition by supporting unneeded regulation.

Airline yield management and advertising practices have played a key role in making air travel affordable for millions of consumers. Absent the ability to advertise low fares for the purpose of filling aircraft, airlines would be required to operate at higher average fares. Yield management allows airlines to maximize the utility of every flight. Without the existing reservations techniques, low fare offerings would become rare. This would not only have negative consequences for consumers, but it would also be counterproductive to the airline industry by

reducing its ability to generate revenues by tapping a broader segment of discretionary travelers.

That said, deceptive airline advertising will not be permitted. But such advertising is not so significant a problem as to require special legislation. There already exists a body of law to protect consumers. Lawyers, consumer affairs specialists and investigators at the Department of Transportation enforce these laws by routinely and proactively monitoring airline advertisements. The vast majority of those ads are neither false nor deceptive. The number of consumer complaints received at the department supports those findings. Overall, complaints on airline advertising only make up about one percent of all the airline-related complaints to DOT. Furthermore, a review of advertising complaints shows that very few involve fares and fewer still reveal actual violations of our advertising requirements.

Whether an advertisement is misleading can be a matter of opinion, and we sometimes disagree with airlines, state officials, and consumer protection advocates. For example, several state Attorneys General have objected to the airline advertising practice, which we permit, of listing government-imposed, per passenger taxes and surcharges (typically \$28 or less for international tickets) separately from the fare charged by the airline. This practice has variously been portrayed by some as false, deceptive or misleading. Apparently supporters of H.R. 5124 agree since the bill would require that all government taxes

and fees be included in the airfare advertised. We, however, know of no state where taxes must be included in advertised prices for goods or services. Why anyone would want a different standard applied for airline taxes and fees is unclear to us.

With the amount of per passenger taxes listed separately in the advertisement, as we permit, customers can add them to the advertised fare to calculate a total price to be paid. On the other hand, if we required airlines to include all taxes in their advertised fares, it would make it nearly impossible to publish multi-destination advertisements because of the various combinations of routings, with a resulting drop-off in advertising.

Regarding any belief that the Department of Transportation does little to enforce our existing deceptive practice requirements, I can assure you that we aggressively pursue enforcement action against airlines for deceptive practices. Section 411 of the Federal Aviation Act prohibits deceptive practices and numerous DOT regulations and orders spell out in more detail the kinds of advertising we consider to be deceptive. In the past 14 months alone, we have issued 17 cease and desist orders and assessed over \$440,000 in civil penalties in cases involving deceptive airline advertising. Five of these cases dealt specifically with fare advertisements. Since 1987, we have assessed penalties of over \$1.3 million in consumer protection cases against large airlines.

Clearly, these enforcement actions are evidence of the high priority we place on consumer protection in the airline industry. But the numbers do not fully reflect our enforcement and compliance activity. Not every case results in a penalty. Both our consumer affairs and enforcement offices routinely issue warnings and obtain compliance, without imposing penalties, from carriers who are first time, inadvertent offenders. Moreover, consumers are almost always permitted to avail themselves of the benefits of printing errors and other advertising mistakes because of the informal efforts of department staff. Furthermore, DOT has checked the availability of seats during low fare sales and has found the total number of seats allocated to the lowest fares to be reasonable.

Turning to the bill itself, we believe the specific advertising requirements it would mandate on listing all taxes and setting out seat availability numbers would make billboard and television fare advertising virtually impossible. It could also require the publication of inaccurate and more costly and confusing newspaper fare advertisements. Moreover, we see the bill's requirements reducing the total amount of fare advertising by airlines, thereby reducing fare competition and increasing consumer costs.

For example, the number of seats made available at the lowest fares vary depending on whether a flight is scheduled during peak times. Airlines increase the number of seats available at the lowest fares for particular flights when their computers detect

slow sales. Therefore, legislated newspaper publication of seat availability could be inaccurately low for some flights and unnecessarily deter customer telephone inquiries. Also, newspaper ad copy must be submitted up to a week before publication. Seat sales for some carriers start well before newspaper publication of the fare advertisements. Thus the number of seats available for some flights, as stated in a newspaper ad, may be inaccurately high on the date of publication. As stated previously, DOT has checked the availability of seats during low fare sales and found the total number of seats allocated at the lowest fares were reasonable. DOT also requires that fare ads state that seats are limited and may not be available on all flights. Airlines comply with that requirement. Even the State Attorneys General, when they attempted to regulate airline fare advertising, did not require publication of the number of seats available at sale prices.

With respect to transferring our regulatory authority over deceptive airline advertising to the Federal Trade Commission, we believe the end result would likely be consumer confusion and a potential for conflict in authority. Under the bill DOT would still regulate contracts of carriage, international tariffs, ticket notice requirements and various other consumer protection matters, but not advertising. We also would be seriously concerned with the FTC regulating scheduling or on-time performance advertising since such regulation could have safety implications beyond that agency's expertise.

In summary, we believe that, if adopted, this bill would be counter productive. It is especially inappropriate in view of the fact that DOT does a good job of ensuring that air carriers conform with federal advertising requirements and airlines do a great job of carrying low-fare passengers.

This concludes my prepared statement. I would be pleased to respond to questions you have concerning the Department's regulation of airline advertising. Samuel Podberesky is available to answer your questions on the Department's enforcement policies and Hoyte Decker can answer your questions on our consumer assistance program.